"We cannot presume that this omission was inadvertent on the part of Congress. *United States* v. *Harris*, *supra* at 309. Even if it were, courts have no power to remedy so serious a defect, no matter how probable it otherwise may appear that Congress intended to include officers; 'probability is not a guide which a court, in construing a penal statute, can safely take.' *United States* v. *Wiltberger*, *supra* at 105. But the framers of the 1938 Act had an intelligent comprehension of the inadequacies of the 1906 Act and of the unsettled state of the law. They recognized the necessity of inserting clear and unmistakable language in order to impose liability on corporate officers. It is thus unreasonable to assume that the omission of such language was due to a belief that the Act as it now stands was sufficient to impose liability on corporate officers. Such deliberate deletion is consistent only with an intent to allow such officers to remain free from criminal liability. Thus to apply the sanctions of this Act to the respondent would be contrary to the intent of Congress as expressed in the statutory language and in the legislative history.

"The dangers inherent in any attempt to create liability without express Congressional intention or authorization are illustrated by this case. Without any legislative guides, we are confronted with the problem of determining precisely which officers, employees and agents of a corporation are to be subject to this Act by our fiat. To erect standards of responsibility is a difficult legislative task and the opinion of this Court admits that it is 'too treacherous' and a 'mischievous futility' for us to engage in such pursuits. But the only alternative is a blind resort to 'the good sense of prosecutors, the wise guidance of trial judges, and the ultimate judgment of juries.' Yet that situation is precisely what our constitutional system sought to avoid. Reliance on the legislature to define crimes and criminals distinguishes our form of jurisprudence from certain less desirable ones. The legislative power to restrain the liberty and to imperil the good reputation of citizens must not rest upon the variable attitudes and opinions of those charged with the duties of interpreting and enforcing the mandates of the law. I therefore cannot approve the decision of the Court in this case.

"Mr. Justice ROBERTS, Mr. Justice REED and Mr. Justice RUTLEDGE join in this dissent."

918. Adulteration and misbranding of elixir phenobarital. U. S. v. The Liebenthal Brothers Co. (Marlo Products Co.). Plea of guilty. Fine, $500 and costs. (F. D. C. No. 7274. Sample No. 71157–E.)

This product was sold under a name recognized in the National Formulary, an official compendium, and differed in strength and quality from the standard prescribed in such authority.

On August 21, 1942, the United States attorney for the Northern District of Ohio filed an information against the Liebenthal Brothers Co., a corporation, trading under the name of Marlo Products Co., Cleveland, Ohio, alleging shipment on or about December 18, 1941, from the State of Ohio into the State of Missouri of a quantity of elixir phenobarbital which was adulterated and misbranded.

The article was alleged to be adulterated in that it purported to be and was represented as a drug, the name of which, elixir of phenobarbital, is recognized in the National Formulary, an official compendium, and its strength differed from and its quality fell below the standard set forth therein since it contained not more than 0.107 gram of phenobarbital in each 100 cc., whereas the Formulary provides that elixir of phenobarbital shall contain not less than 0.37 gram of phenobarbital in each 100 cc.; and its difference in strength and quality from the standard set forth in the compendium was not plainly stated on its label.

It was alleged to be misbranded in that the statement, "Elixir Phenobarbital N. F. * * * Each fluid ounce contains 1.83 grains Phenobarbital," borne on its label, was false and misleading since the statement represented that the article consisted of elixir of phenobarbital which complied with the requirements of the National Formulary and that each fluid ounce thereof contained 1.83 grains of phenobarbital, whereas the article did not consist of elixir of phenobarbital which complied with such requirements, and each fluid ounce thereof contained not more than 0.49 grain of phenobarbital.

On April 13, 1943, the defendant having entered a plea of guilty, the court imposed a fine of $500 and costs.